

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

(Appellate Side)

WPA 5374 of 2020

+

I.A. No. CAN/1/2020

(CAN 3054 of 2020)

Arjun Singh

-Vs.-

The State of West Bengal & Ors.

With

WPA 5376 of 2020

+

I.A. No. CAN/1/2020

(CAN 3053 of 2020)

Nabendu Kumar Bandyopadhyay

-Vs.-

The State of West Bengal & Ors.

with

WPA 5416 of 2020

+

I.A. No. CAN/1/2020

(CAN 3116 of 2020)

Jaimin Rajani

-Vs.-

The State of West Bengal & Ors.

with

WPA 5377 of 2020

Ambooj Sharma

-Vs.-

The State of West Bengal & Ors.

**Before: The Hon'ble The Chief Justice Thottathil B. Radhakrishnan
&
The Hon'ble Justice Arijit Banerjee**

For the Petitioners : Mr. Vikash Singh, Adv.
... In WPA 5374 of 2020

Mr. Arijit Bakshi, Adv.
Mr. Ravi Ranjan Kumar, Adv.
... In WPA 5376 of 2020

Mr. Rochit Lakhmani, Adv.
Mr. Indrajit Dey, Adv.
Mr. Sandipan Das, Adv.
... In WPA 5416 of 2017

Mr. Sabyasachi Chatterjee, Adv.
Ms. Debolina Sarkar, Adv.
... In WPA 5377 of 2017

For the Union of India : Mr. Y. J. Dastoor, A.S.G.
Ms. Rajashree Kundalia, Adv.
Mr. Vipul Kundalia, Adv.

For the State : Mr. Kishore Dutta, A.G.
Md. Talay Masood Siddiqui, Adv.
Mr. Sayan Sinha, Adv.

Heard On : 28.04.2020, 15.05.2020, 19.05.2020,
02.06.2020, 18.06.2020, 26.06.2020,
26.08.2020, 09.09.2020, 16.09.2020,
23.09.2020 & 24.09.2020

CAV on : 24.09.2020

Judgment On : 30.09.2020

Arijit Banerjee, J.:

1. Under challenge in these writ petitions is the decision of the State Government to ban the use of cell phones inside hospital premises, and in particular, the hospitals where Covid-19 patients are admitted. Such decision was contained in a Government Order dated April 22, 2020. The Order was passed on the basis that cell phones could be carriers of Corona Virus. Certain additional issues were pleaded in WPA 5374 of 2020 but the same were not pressed by the petitioner to avoid the mischief of mis-joinder of causes of action.

2. The contention of the petitioners is that the decision to ban use of cell phones in hospitals is arbitrary and without any basis. It was contended that no State Government apart from the Government of West Bengal has issued direction for banning the use of cell phones in hospitals by the doctors, health workers and patients. It was submitted that cell phone is the only channel of communication between a hospitalized patient in the isolation wards dedicated for Covid-19 patients and his family members. Unless such a patient is a permitted user of cell phone, he will be totally cut off from his family. There would be no way for such a patient to communicate with his family members and *vice-versa*. This would cause tremendous anxiety and mental agony to both the patient and his family.

3. Learned Counsel for the petitioners submitted that although under Section 2 of the Epidemic Diseases Act, 1897, the concerned authorities can

adopt measures and issue directions to prevent the spread of an epidemic, their actions must pass the test of reasonableness. It was submitted that on the date when the order banning use of cell phones in hospitals was issued, there was no material before the State Government justifying the issuance of such order. By imposing such a ban, the State Government has illegally impinged upon the right of free communication which is a Fundamental Right of every citizen of India including the patients infected with Covid-19 and their family members.

4. It was further submitted that the prohibition imposed by the State Government is violative of Articles 19 (1)(a) and 21 of the Constitution. The ban on mobile phones in Covid-19 hospitals is perverse. Such ban serves no purpose other than to prevent the possibility of exposure of gross mismanagement of Covid-19 patients and the deplorable condition that exists in hospitals.

5. It was also submitted that any object can be a potential carrier of Corona Virus. This may include wrist watches, books, gloves and other objects. To single out and ban mobile phones is absurd. Mobile phones expedite recovery of patients by keeping them in a good frame of mind and ensuring their mental well being. The petitioner in WPA 5416 of 2020 has relied on newspaper cuttings in support of his submission that the Central Government through the Director General of Health Services has issued directions to all States and Union Territories to allow the use of mobile phones to Covid-19 patients admitted in hospitals for their mental health and speedy recovery and that same recommendations have been made by

various medical groups and organizations including the Association of Health Service Doctors, West Bengal.

6. When these matters were moved, we had called for a report in the form of affidavit from the State. Such affidavit has been filed. Learned Advocate General appearing for the State Government has made detailed submission with reference to such affidavit and has sought to impress upon us that the decision that was taken on 22 April, 2020 was in the best interest of the Covid-19 patients, other patients, doctors, health workers and everybody else physically present in a hospital.

7. The stand of the State Government will appear from the affidavit filed by it, material portions whereof are extracted hereunder:

“a. That while the pandemic situation prevailed in the months of March-April, 2020 there was no formal protocol available for treatment of patients of COVID-19. Even no guideline was available from Govt. of India or ICMR. In this circumstance, a report published in various media platforms stated that a group of doctors from AIIMS in Raipur suggested that mobile phones could possibly be a potential vector for spread of SAES-CoV-2. Another group of doctors claimed that the unrestricted use of mobile phones could be the missing link in controlling the COVID-19 pandemic.

Photostat copy of one of such report published in a daily news paper as well as an article on the topic "Mobile phones represent a pathway for microbial transmission" are annexed hereto and collectively marked with letter "A"

b. That as a result, keeping in mind, the treatment of COVID-19 patients and to save their lives it was felt utmost necessary to prevent spread of SARS-CoV-2, as well as to restrict the transmission of the virus to avoid risk of the affected persons, a whatsapp message was sent to the District Magistrate, CMOHs & Superintendents of COVID-19 Hospitals not to allow or carry, possess or use mobile phones inside the hospital for pre-empting infection. Such restriction was not meant for COVID-19 patients only. This applied to all persons inside the hospital whether doctor, patient or on duty staffs. With such restriction, it was also advised to ensure alternate communication channel by way of providing intercom facility, land line arrangement with STD call facility on priority basis. This was done only to restrict spreading/transmission of the virus.

d. That in this connection, it may be mentioned that, with the introduction of this arrangement to curb the spread of the virus, it was advised in a video conference to the administrators of the COVID Hospitals that if there was

sufficient infection control protocol in place in the treatment centers, the restriction of use of mobile phones can be relaxed. Accordingly, most of the COVID-19 Hospitals except M.R. Bangur Hospital & Calcutta Medical College & Hospital allowed use of mobile phones. However, good number of patients in these two hospitals voluntarily deposited their mobile phones or expressed desire not to carry the mobile phone inside the hospital. However, such relaxation could not be allowed in the first instances in Calcutta Medical College Hospital and M.R. Bangur Hospital because many critical patients were admitted mainly in these two Hospitals. During restriction on use of mobile phones in these two COVID Hospitals, arrangement was made for video chats also for COVID-19 patients and their families. Arrangement was also made for regularly briefing the conditions of the patients to their relatives over telephone. Virtual visiting hours also had been set up in the hospitals to facilitate communication between patients and their relatives.

A Photostat copy of the news report published in a Daily News Paper on Virtual Visiting Hours at the M.R. Bangur Hospital is annexed hereto and marked with the Letter "C"

e. It is also pertinent to mention here that in the Covid Hospitals since last few months, for communication purpose, the Government of West Bengal has established and/or installed three modes of communications namely (i) Intercom facility by which all the wards of the Covid Hospitals are connected with each other and also with the ward masters office, superintendent office and NS office; (ii) Dedicated Wireless GSM base Phones has been installed in each ward through which direct communication can be made by patients relatives; (iii) Fixed time Video Calling facility between the patients and their family members. I further beg to state that the Department of Health and Family Welfare Government of West Bengal has also launched a software namely Covid-19 Patients Management System (CPMS) which helps the relatives of the patients to track the patients daily health status by logging in through their respective registered mobile numbers.

f. In view of above reasons, the message was sent to the concerned authorities for restriction on mobile phones in COVID-19 hospitals with the soul intention to arrest the transmission of the virus.

g. In this connection, it may be stated that, an Advisory had been issued to all COVID-19 hospitals advising them to continue the following practices:-

(i) To ensure continuation of the existing practice of allowing one willing attendant of the patient in the hospital premises. Such an attendant should be allowed to remain in the earmarked patient waiting shed in the hospital premises for such duration as may be required.

(ii) COVID-19 hospitals should continue facilitating communication between the hospital and patient's family members about his/her medical condition from time to time by utilizing the already existing on-campus help desks.

(iii) Arrangements regarding call centre and video calling should also continue. Patient party members should be informed about the available telephone numbers at the time of admission of the patient so that line of communication is established properly.

A Photostat copy of the said Advisory vide memo no. HFW/NHM-228/2020 dated 07.07.2020 is annexed hereto and marked with the letter "D".

8. The case of the State Government therefore, appears to be, that in the wake of outbreak of the Covid-19 pandemic, the Government adopted such measures as it thought would be in the best interest of everybody concerned. There was one school of thought that cell phones could be potential carriers of Corona virus. Since this was a possibility, the Government played it safe. It cannot be said that the decision of the Government was based on no material at all. Further, with the passage of time, the restriction imposed has been eased out gradually and cell phones are now being permitted to be used in most of the hospitals. In the hospitals like M.R. Bangur and Calcutta Medical College where cell phones are still not being allowed, sufficient arrangements have been made for audio/video calling so that a patient can be in touch with his/her family members and the latter can be kept informed about the state of health of the patient.

9. We have anxiously considered the respective contentions of the parties. There is no doubt that cell phone has become an integral part of our lives. Mobile phones have come to be inextricably intertwined with our daily lifestyle. Indeed, if we do not have a cell phone handy, many of us feel diffident. Almost gone are the days of the fixed landline telephones. Mobile phones have become the most used means of communication between persons at different geographical locations. When mobile phones were first introduced, they were considered to be a luxury. The price of mobile phones at that time was also such that the device was beyond the reach of a major section of our society. Over the last 25 or 30 years, cell phones have revolutionized the world. The globe has become a smaller place because of

cell phones. Now this device is not considered to be a luxurious item. It has become a necessity for most of us.

10. No doubt that the ban on use of cell phones in hospitals impinged upon the right of free communication of patients and others present in a hospital. However, one must remember that with the sudden outbreak of Covid-19 pandemic, the world at large including the governments across the countries were faced with an unprecedented situation. The people of this planet including the medical sector across the globe were taken by complete surprise by the novel Corona Virus about which nobody knew much. Nobody had any idea as to how to contain the spread of the virus or to escape from the sinister claws of the virus. There was no medical protocol in place. It was a virus that was unknown to the world. It was indeed *Novel*.

11. The situation was not different in the State of West Bengal. On one hand there was this virus spreading its wings in all directions at a rapid rate and on the other hand there was no known standard medical or clinical procedure to prevent the spread of the virus or to treat the Covid-19 disease. Under those circumstances, the only thing that one could do is perhaps avoid everything that could even remotely have the possibility of causing spread of the virus. Thus, social distancing became the norm. Facial masks, gloves and hand sanitizers became essential parts of our daily lives. There was one school of medical thought that subscribed to the idea that mobile phones could be potential carriers of Corona Virus. We have not only gone through the literature annexed to the affidavit of the State Government, we have taken judicial notice of other literature in this regard available on the

internet. It is true that there is no conclusive evidence that mobile phones are potential carriers of the virus. It is equally true that there is no conclusive evidence that mobile phones cannot be potential carriers of Corona Virus. Under those circumstances, we cannot say that it was wholly unreasonable, imprudent or arbitrary on the part of the State administration to impose ban on use of mobile phones inside hospitals which were treating Covid-19 patients. The situation was such that everybody was groping in the dark in search of ways and means to restrict the spread of Covid-19 pandemic and find a cure for the malady. In such situation, often it becomes necessary for the people in governance to take a decision on a trial and error basis or to impose certain restrictions on the members of the society for the safety of their health which may have the effect of curtailment of some of their constitutional rights.

12. Be that as it may, we have seen from the State's affidavit that the ban imposed in April 2020 has now been relaxed to a large extent and mobile phones are being permitted in almost all the hospitals. Learned Counsel for the petitioners argued that as on the date of imposition of the ban there was no material available with the Government on the basis of which that decision could be taken. We are not inclined to go into that controversy. We have indicated above that there was a section of experts who were of the opinion that mobile phones could potentially be an instrument for spreading Corona Virus. Even otherwise, we do not think that the decision of the State government was perverse or *Wednesbury unreasonable*. In our opinion, it

will serve no useful purpose to conduct a post mortem of the decision of the State administration imposing the ban.

13. We have noted that arrangements have been made by the State Government in the hospitals particularly where mobile phones are still not being permitted, so that a patient can be in touch with his/her family members and they can also see each other virtually through video calling mode. We are sure that the State Government shall take such appropriate measures without compromising the health issues of the public at large to ease out the ban on use of mobile phones in hospitals since the same definitely causes inconvenience and other problems for the members of the society. The State Government should follow any directive/advisory issued in this regard by the appropriate department of the Central Government.

14. Learned Counsel for the petitioner in WPA 5416 of 2020 sought to rely on certain newspaper reports. However, it is well established that newspaper reports are of dubious evidentiary value and should not ordinarily be acted upon by a Court of law unless supported by an affidavit of the author of the report. However, we repeat that we have full faith and trust that the Administration shall not unnecessarily prevent use of cell phones in hospitals and shall take all measures to minimize or eliminate any inconvenience or problem that a patient or his/her family may be facing by reason of banning use of mobile phones in hospitals.

15. One other issue raised by Learned Counsel for the petitioners is that if the other hospitals are now permitting use of mobile phones, then there is

no reason why M.R. Bangur Hospital and Calcutta Medical College Hospital also will not permit use of mobile phones. Learned Advocate General representing the State submitted that these two hospitals have more critical patients than the other hospitals and hence the restriction on use of mobile phones is still there in these two hospitals. We are not quite impressed with this stand of the State. It is not quite acceptable that all the other hospitals are treating less critical patients than the aforesaid two hospitals. However, we are sure that the appropriate sector of the State administration shall revise and reassess the situation in the said two hospitals, *i.e.*, M.R. Bangur Hospital and Calcutta Medical College Hospital and, unless there are very compelling reasons to be recorded in writing by the appropriate authority, the ban on use of mobile phones in these two hospitals also will be lifted.

16. Four writ petitions being WPA 5374 of 2020, WPA 5376 of 2020, WPA 5416 of 2020 along with WPA 5377 of 2020 are accordingly disposed of. There will no order as to costs.

Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.

I agree.

(Thottathil B. Radhakrishnan, CJ.)

(Arijit Banerjee, J.)